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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12
13 AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
14 SOUTHERN CALIFORNIA,

15 *Plaintiff,*

16 v.

17 UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,
18 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY,
19

20 *Defendants.*

Case No. 2:22-CV-04760-SHK

**PLAINTIFF'S STATEMENT OF
UNCONTROVERTED FACTS IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

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27 *ACLU of Southern California v. U.S. ICE, et al.,*

28 Case No. 2:22-CV-04760-SHK

PLAINTIFF'S STATEMENT OF UNCONTROVERTED FACTS ISO
MOTION FOR SUMMARY JUDGMENT

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PLAINTIFF’S STATEMENT OF UNCONTROVERTED FACTS
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

1. Plaintiff submitted its FOIA request (“Request”) to ICE, DHS’s Privacy Office, and DHS-OIG on April 29, 2022, seeking information about ICE’s practice of deathbed releases of immigration detainees.

Evidence: ECF No. 1-1 (FOIA Request).

2. The Request sought nine categories of records, generally including: (1) documents related to the hospitalization, death, and release from custody of Teka Gulema, Johana Medina Leon, Jose Ibarra Bucio, and Martin Vargas Arellano; (2) DHS-OIG reports of investigation regarding these four individuals, including “exhibits, appendices, or attachments”; (3) ICE Office of Professional Responsibility (OPR) investigations regarding these four individuals; (4) ICE and ICE Health Service Corps directives, policies, and procedures regarding the release from custody of hospitalized detainees; (5) records in possession of specific ICE offices identifying hospitalized detainees released from custody; (6) documents created by DHS-OIG or OPR that mention ICE’s release of hospitalized detainees; (7) documents created by DHS-OIG or OPR mentioning the death of detainees previously released by ICE while hospitalized; (8) documents identifying detainees who were hospitalized due to COVID-19 and were subsequently released from custody while hospitalized; and (9) financial records reflecting payments for healthcare of detainees released from ICE custody while hospitalized.

Evidence: ECF No. 1-1 (FOIA Request).

3. On May 16, 2022, DHS-OIG acknowledged receipt of the Request, assigned it a tracking number, and granted Plaintiff’s request for a fee waiver and expedited processing.

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Evidence: ECF No. 24-1 at 20.

4. Between July 5, 2022 and September 2, 2022, DHS-OIG and Plaintiff corresponded several times regarding search terms and methodology, including a telephone conference on August 18, 2022.

Evidence: ECF No. 24-1 at 22-35.

5. On September 2, 2022, Plaintiff sent letter requesting that DHS-OIG search for records in its possession regardless of whether they are “maintained” by DHS-OIG, or are “under the purview of ICE.”

Evidence: ECF No. 24-1 at 34.

6. After receiving no response to its September 2, 2022 letter, Plaintiff followed up by email on September 12, 2022, requesting that DHS-OIG indicate when it intended to respond.

Evidence: Declaration of Laboni Hoq (“Hoq Decl.”), Exh. B.

7. Plaintiff filed suit against Defendants DHS and ICE on July 12, 2022, but did not separately name DHS-OIG as a Defendant at that time.

Evidence: Complaint, ECF No. 1.

8. After DHS-OIG failed to respond to Plaintiff, on October 4, 2022, Plaintiff amended its complaint, adding DHS-OIG as a Defendant to the suit.

Evidence: Amended Complaint, ECF No. 24.

9. DHS-OIG began its first production of FOIA documents on November 23, 2022, and made its final production on August 2, 2023.

Evidence: Declaration of Eunice Cho (“Cho Decl.”), ¶¶ 5-12.

10. In total, DHS-OIG produced 113 pages of records in full. It withheld 460 pages in part, and 367 in full. DHS-OIG also referred 1,879 pages to other DHS components or agencies, including 1,420 pages to ICE, and 1 page to DHS Office of Civil Rights and Civil Liberties (“CRCL”).

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Evidence: Cho Decl., ¶ 12.

11. The chart below reflects DHS-OIG’s FOIA production to Plaintiff:

	Nov. 23 2022	Dec. 21, 2022	Jan. 30, 2023	Feb. 27, 2023	Mar. 30, 2023	Jun. 29, 2023	Jul. 31, 2023	Aug. 2, 2023	Total
Released in Full	4	60	5	0	10	48	0	6	133
Withheld in Part	117	128	1	0	44	74	91	5	460
Withheld in Full	0	0	0	0	113	74	180	0	367
Duplicates (not produced)	127	0	0	1140	61	757	644	0	2729
Non-Responsive (not produced)	0	0	1072	0	736	17	20	0	1845
Referred to ICE	220	280	0	0	9	328	583	0	1420
Referred to DOJ EOUSA	233	185	0	0	0	0	0	0	418
Referred to “unidentified” DHS component¹	0	0	0	0	0	8	0	0	8
Referred to DHS CRCL	0	0	0	0	0	1	0	0	1
Referred to DHS CBP	0	0	0	0	32	0	0	0	32

Evidence: Cho Decl., ¶ 12.

12. On December 8, 2023, Plaintiff provided Defendants with a list of documents that it sought to challenge to include in a *Vaughn* index.

Evidence: Hoq Decl. Ex. L.

13. The parties met and conferred on December 14, 2023 and over email between December 15 and 19, 2023, to establish a proposed timeline for partial summary judgment briefing as to Defendants DHS-OIG and DHS.

Evidence: Hoq Decl., ¶ 15.

¹ On October 2, 2023, Defendants clarified that the “unidentified DHS component” was the DHS Privacy Office. Hoq Decl. Ex. D.

1 14. On December 21, 2023, the Court issued an Order setting forth the briefing
2 schedule.

3 *Evidence:* ECF No. 64.

4 15. Defendants provided a search summary of DHS-OIG's search to Plaintiff on
5 January 19, 2024.

6 *Evidence:* Hoq Decl. Ex. R.

7 16. Defendants provided a Vaughn Index to Plaintiff on February 9, 2024.

8 *Evidence:* Hoq Decl. Ex. Y.

9 17. On February 8, 2024, ICE produced 567 pages, redacted in part, of 583
10 pages that referred by DHS-OIG to ICE, after it concluded that 16 pages
11 were non-responsive.

12 *Evidence:* Hoq Decl., ¶ 23, Exs. W and X.

13 18. Plaintiff responded by letter on February 13, 2024, noting that its Request had
14 specified *all* attachments to DHS-OIG investigations into Mr. Gulema's death,
15 and requesting that Defendants provide the remaining 16 pages from the
16 tranche processed by Defendants in February 2024. Plaintiff also requested
17 that Defendants produce all remaining documents referred to ICE by DHS-
18 OIG. These documents include several dated between October and November
19 2015, regarding ICE's decision to release Mr. Gulema from custody, which
20 Plaintiff has repeatedly requested from Defendants.

21 *Evidence:* Hoq Decl. Ex. Z.

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1 Dated: February 23, 2023

Respectfully submitted,

2
3 /s/ *Laboni Hoq*

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